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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,433	04/08/2004	Michael R. Forman	814P	7177
41511 7590 05/02/2008 THOMAS M. FREIBURGER P.O. BOX 1026 TIBURON, CA 94920				
EXAMINER GILBERT, SAMUEL G				
ART UNIT 3735		PAPER NUMBER		
MAIL DATE 05/02/2008		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/820,433

Applicant(s)

FORMAN ET AL.

Examiner

Samuel G. Gilbert

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4 and 5 is/are allowed.
- 6) ☒ Claim(s) 3 and 6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 3 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Lary (5,156,150).

Lary teaches a device and method as claimed The Examiner is considering the breast map to be the device as shown in figure 1.

The method is set forth in columns 3 and 4 and specifically column 6 lines 40-55.

Claim 6 - the Examiner is considering the breast map to be the device as shown in figure 1, a marker "focus here, with target" is considered colored ink and enclosure -70- is a leak proof bag.

Response to Arguments

Applicant's arguments, see pages 2-7, filed 1/28/2008, with respect to claims 1, 2 and 5 have been fully considered and are persuasive. The rejection of claims 1, 2 and 5 has been withdrawn.

Regarding claim 3 - the applicant argues that Lary does not teach a "gross breast pathology breast map" because no breast map is on the board. The claim as recited

does not include any specific structure for the breast map, therefore the examiner is considering the device of figure 1, including the indicia -28- and -30 a breast map.

Regarding claim 6 - the applicant argues that Lary does not teach a "gross breast pathology breast map" because Lary comprises a pad to be laid over the breast. The claim as recited does not include any specific structure for the breast map, therefore the examiner is considering the device of figure 1, including the indicia -28- and -30 a breast map. The applicant further argues that enclosure -70- may or may not be leakproof. It is the examiner's position that when bag is sealed it is leakproof. There is no reason to consider the bag to be anything but being leakproof.

Allowable Subject Matter

Claim 1, 2, 4 and 5 is allowed.

The following is a statement of reasons for the indication of allowable subject matter: the prior art does not teach or suggest a breast mapping system including three layers including a radiosensitive third layer including a graphical representation of the breast aligned to the top layer as claimed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel G. Gilbert whose telephone number is 571-272-4725. The examiner can normally be reached on Monday-Friday 6:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Samuel G. Gilbert/

Primary Examiner, Art Unit 3735